

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

**ORDER ADOPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION AND DISMISSING CASE**

Before the Court is Plaintiff Darrell Taylor’s pro se complaint, filed on June 15, 2020. (ECF No. 1.) Plaintiff also filed a Motion seeking leave to proceed *in forma pauperis* (ECF No. 2), which was granted on June 29, 2020. (ECF No. 6.) After screening Plaintiff’s complaint under 28 U.S.C. § 1915(e)(2), the Magistrate Judge entered a Report and Recommendation (“R. & R.”) on June 29, 2020, advising the Court to dismiss the complaint for failing to state a claim upon which relief could be granted. (*Id.*) Plaintiff filed no objections and his opportunity to do so has passed. *See* 28 U.S.C. § 636(b)(1); LR 72.1(g)(2) (objections must be filed within fourteen (14) days after being served a copy of the R. & R.). For the following reasons, the R. & R. should be ADOPTED, and Plaintiff’s claims DISMISSED with prejudice.

Congress passed 28 U.S.C. § 636(b) “to relieve some of the burden on the federal courts by permitting the assignment of certain district court duties to magistrates.” *United States v. Curtis*, 237 F.3d 598, 602 (6th Cir. 2001). Pursuant to the provision, magistrate judges may hear and determine any pretrial matter pending before the Court, except various dispositive motions. 28

U.S.C. § 636(b)(1)(A). Upon hearing a pending matter, “the magistrate judge must enter a recommended disposition, including, if appropriate, proposed findings of fact.” Fed. R. Civ. P. 72(b)(1); *see also Baker v. Peterson*, 67 F. App’x 308, 310 (6th Cir. 2003). Any party who disagrees with a magistrate’s proposed findings and recommendation may file written objections to the report and recommendation. Fed. R. Civ. P. 72(b)(2). However, “[w]hen no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72(b) advisory committee notes. The district court is not required to review, and indeed “should adopt[,] the findings and rulings of the Magistrate Judge to which no specific objection is filed.” *Brown v. Bd. of Educ. of Shelby Cty. Sch.*, 47 F. Supp. 3d 665, 674 (W.D. Tenn. 2014) (citing *Thomas v. Arn*, 474 U.S. 140, 149 (1985)).

Here, the Magistrate Judge found that Plaintiff’s 42 U.S.C. § 1983 claim should be dismissed because he failed to allege any deprivation of rights under the federal constitution or laws of the United States. (ECF No. 6.) The Court agrees, and in the absence of any objection by Plaintiff, finds that the R. & R. should be adopted. *Brown*, 47 F. Supp. 3d at 674.

The Court also agrees with the Magistrate Judge’s recommendation that the Court certify, pursuant to 28 U.S.C. § 1915(a)(3), that Plaintiff may not appeal the above determination *in forma pauperis* because such an appeal would not be taken in good faith. (ECF No. 6.) Plaintiff raised no objection to the R. & R. “An appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith.” 28 U.S.C. § 1915(a)(3). “The good faith standard is an objective one” and considers whether the litigant seeks appellate review of any nonfrivolous issue. *Beard v. Memphis, TN Crim. & Judicial Sys.*, No. 17-2184-STA-cgc, 2017 U.S. Dist. LEXIS 100175, at *8 (W.D. Tenn. June 16, 2017). Additionally, courts hold that it would be inconsistent for a district court to determine that a complaint should be dismissed prior to service on the

defendant, while simultaneously finding that the claim has sufficient merit to support an appeal *in forma pauperis*. *Id.* at *8. Accordingly, this Court certifies, pursuant to 28 U.S.C. § 1915(a), that an *in forma pauperis* appeal in this case by Plaintiff would not be taken in good faith, and thus, may not be taken.

CONCLUSION

In the absence of any party objections and having satisfied itself that there is no clear error on the face of the record, the Court hereby **ADOPTS** the Magistrate Judge's Report and Recommendation and **DISMISSES** Plaintiff's complaint with prejudice for failing to state a claim. The Court **CERTIFIES** that Plaintiff may not appeal the determination herein *in forma pauperis*.

IT IS SO ORDERED this 15th day of December 2020.

s/John T. Fowlkes, Jr. _____
JOHN T. FOWLKES, JR.
United States District Judge